**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]
Description of case

**Criminal Appeal No. 1542 of 2001 Decided on: 13th April, 2007**
**(Old No. 2110 of 1999)**

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 13.04.2007

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

**Reserved Judgment**

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Appeal No. 1542 of 2001**
**(Old No. 2110 of 1999)**

Shri Chhatar Pal
S/o Sri Raghubir Singh
R/o Nala Pani Road, Nai Basti,
P.S. Dalanwala,
District Dehradun.

…….. Appellant

**Versus**

The State …… Respondent

Ms. Geeta Parihar, learned counsel for the appellant.
Mr. G.S. Sandhu, Government Advocate for the respondent State.

**Coram: Hon'ble J.C.S. Rawat, J.**
**Hon'ble Prafulla C. Pant, J.**

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 20 / 23.08.1999, passed by learned Additional Sessions Judge, Dehradun in Sessions trial No. 62 of 1996, whereby accused / appellant Chhatar Pal has been convicted under Section 304 Part II of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.) and under Section 376 of I.P.C. The convict has been sentenced under Section 304 Part II of I.P.C. to undergo rigorous imprisonment for a period of ten years and under Section 376 of I.P.C. to

Imprisonment for life. Both the sentences were directed to run concurrently.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that in the intervening night of 9th and 10th of November 1995, P.W. 1 Rishi Pal (complainant) was sleeping in his house with his family. At about 11:00 P.M., on hearing shrieks and cries emanating from nearby cowshed of his brother, the complainant Rishi Pal and his wife Bimla along with their son Sanjay, went there. Meanwhile, on hearing the noise P.W. 2 Jas Ram (brother of the complainant) also rushed towards the cowshed. On reaching there, they saw accused Chhatar Pal, their neighbour, running out from the cowshed. The aforesaid witnesses had torch with them. In the light of torch they identified Chhatar Pal (accused / appellant). The complainant, his wife, his son and his brother went inside the cowshed and saw that Ms. Manju (daughter of the complainant) aged 14 years, was lying inside in a half naked condition. She told her parents and uncle that accused Chhatar Pal brought her in the cowshed against her will and raped her. At about midnight on that very day, complainant, his wife Bimla and his son Sanjay went to police outpost Nala Pani and narrated the story. However, the police instead a registering the complaint, got a compromise made, between the parties. On 11.11.1995, at about 12:30 (noon). Ms. Manju succumbed to the injuries suffered by her in the incident which took place in the intervening night of 9th and 10th of November,

1995. On this a First Information Report (Ext. A –1) was got lodged by P.W. 1 Rishi Pal and a crime No. 421 of 1995 relating to offences punishable under Section 376, 304 and 452 of I.P.C. was registered against the accused Chhatar Pal with police station Dalanwala on 11.11.1995, at 14:10 hours. P.W. 8, the then Head Constable Kripal Singh prepared the check report (Ext. A –15) on the basis of the First Information Report lodged. He also made necessary entry in the general dairy, extract of which is Ext. A –16. The investigation was entrusted to P.W. 6 Sub Inspector Virendra Singh. The Investigating Officer inspected the spot and prepared site plan. He also took into possession dead body of Ms. Manju and prepared inquest (Ext. A –6); police form No. 13; police form No. 33; sketch of the dead body and letters to the Chief Medical Officer, requesting him for postmortem examination of the dead body (Ext. A –7 to Ext. A –12). The Investigating Officer arrested the accused on the very day (i.e. 11.11.1995) and took his underwear into his possession and prepared report (Ext. A –3). The dead body of Ms. Manju was sent for postmortem examination. P.W. 4 Dr. Alok Teotia along with another Doctor G.P. Panyuli conducted the autopsy on the dead body on 12.11.1995, at 2:00 P.M. They found injuries on the private parts of the deceased. The Medical Officers opined that deceased had died due to shock and haemorrhage as a result of ante mortem injuries. They prepared the postmortem examination report (Ext. A –5). The investigation was later on transferred to P.W. 7 Sub Inspector R.D. Tyagi, who interrogated the witnesses and took the torch (in the light of which the witnesses saw the

accused) in his possession, and after sending the underwear of the accused, clothes of the girl and the matterss in which the blood stains were found, to Chemical Examiner and on completion of investigation a charge sheet (Ext. A –14) was filed by the said subsequent Investigating Officer against the accused Chhatar Pal, for his trial in respect of offences punishable under Section 452, 376, 304 of I.P.C.

4) The Magistrate on receipt of the charge sheet, after giving necessary copies to the accused, as required under Section 207 of the Cr.P.C., appears to have committed the case to the court of Sessions, for trial. It appears that the case was finally transferred to the court of Additional Sessions Judge, Dehradun, for trial and disposal. Learned Additional Sessions Judge, after hearing the prosecution and the defence, framed charge of offences punishable under Section 376 and 302 of I.P.C., against accused Chhatar Pal, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Rishi Pal (informant and father of the deceased); P.W. 2 Jas Ram (uncle of the deceased); P.W. 3 Faqir Chand (witness of the inquest report); P.W. 4 Dr. Alok Teotia (one of the members of the postmortem examination team): P.W. 5 Sushila Devi (who saw swelling on the private parts of the victim); P.W. 6 Sub Inspector Virendra Singh (who started the investigation); P.W. 7 Sub Inspector R.D. Tyagi (who concluded the investigation); P.W. 8 Sub Inspector Kripal Singh (who prepared the check report of F.I.R. and P.W. 9 Surendra Singh Chauhan [Circle Officer (City)]. A report Ext. A –19 received from the Chemical Examiner is also produced on the record. The oral and documentary

evidence was put to the accused under Section 313 of Cr.P.C., in reply to which he alleged the same to be false. The accused in his replies under Section 313 of Cr.P.C. alleged that he has been falsely implicated due to enmity. However, no evidence is adduced in defence. After hearing the prosecution and the defence, the trial court found accused / appellant Chhatar Pal guilty of charge of offences punishable under Section 376 and 304 Part II of I.P.C., and after hearing the parties on sentence, sentenced the convict Chhatar Pal under Section 376 of I.P.C. to imprisonment for life and under Section 304 Part II of I.P.C. to rigorous imprisonment for ten years. However, the accused stood acquitted of the charge of offence punishable under Section 302 of I.P.C. Aggrieved by said judgment and order dated 20 / 23 of August, 1999, this appeal was preferred by the convict before the Allahabad High Court, from where it is received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention here, the ante mortem injury found on the person of the deceased. The statement of P.W. 4 Dr. Alok Teotia read with postmortem examination report (Ext. A –5) discloses following ante mortem injury on the person of Ms. Manju (the deceased):

> ***Abrasion 0.2 cm X 0.3 cm on the right labia majora near the inferior angle.***

The team of Medical Officers also observed following injury on the person of the deceased on internal examination of her generation organs:

> ***Vagina has one laceration posteriorly measuring 1.5 cm X 0.5 cm.***

Also, it is observed by the team of Medical Officers that the vagina was filled with blood. P.W. 4 Dr. Alok Teotia has further stated that he found that the hymen has multiple tears which are visible after stretching it by finger tip, at the time of postmortem examination of the deceased. As mentioned earlier, the team of Doctors opined that cause of death was shock and haemorrhage as a result of ante mortem injuries.

6) The above medical evidence establishes that the deceased had died homicidal death and she was subjected to rape before her death. This fact gets corroboration from the Chemical Examiner's report (Ext. A –19) which discloses that in the underwear of the accused, matters and 'SALWAR' of the deceased, spermatozoa were found. In these articles human blood also found. As such, the Chemical Examiner's report supports the prosecution story that the accused Chhatar Pal has raped Ms. Manju.

7) P.W. 1 Rishi Pal, complainant and father of the deceased, narrating the prosecution story says that on 09.11.1995, at about 11:00 P.M., he along with his wife, his son and the younger daughter were sleeping when they heard cries from nearby cowshed. The witness states that he along with his wife, son and brother rushed towards the

cowshed and saw in the light of the torch that accused, who is their neighbour, was running out of the cowshed. When they entered in the cowshed they saw Ms. Manju (daughter of this witness Rishi Pal) was moaning in a half naked condition. The victim told her parents and the other witnesses who came there that accused Chattar Pal shut her mouth and committed rape on her. This witness states that when he made an attempt to lodge the report with police outpost Nala Pani, Police directed them enter into compromise and no report was lodged. Thereafter, on 11.11.1995, according to this witness, his daughter Ms. Manju died and then First Information Report (Ext. A –1) was lodged with police station Dalanwala.

8) The above statement is fully corroborated by the statement of P.W. 2 Jas Ram, uncle of the deceased, who also witnesses the accused running from the cowshed, after he heard cries from there. This witness has also corroborated the fact that the victim told her parents and him, on reaching there, that accused Chhatar Pal after closing her mouth committed rape on her.

9) The statement of P.W. 1 Rishi Pal that police of outpost Nala Pani did not lodge report gets corroboration from the statement of P.W. 9 Surendra Singh Chauhan, Circle Officer, City (a police officer of the rank of Deputy Superintendent) who has disclosed that on receipt of complaint from Senior Superintendent of Police, he enquired into the allegations against the police personnel of the outpost Nala Pani and found Head Constable Chandra Mohan, Constable Tara Singh, Constable Satvir, Constable

Krishna Malik and Constable Ravindra negligent in refusing to lodge the report.

10) The witnesses P.W. 1 Rishi Pal and P.W. 2 Jas Ram had not enmity with their neighbour Chhatar Pal (accused / appellant). There is no reason on the record why they would falsely implicate him in the crime living the real culprit. The prosecution has successfully shown the source of light i.e. torch in which the accused was seen running from the cowshed where the victim was raped.

11) P.W. 3 Faqir Chand has proved that the dead body of the deceased was taken into possession by the police on 11.11.1995 and inquest report was prepared. This witness has further proved that the matterss (Ext. 2) containing bloodstains was also taken into possession by the police and recovery memo (Ext. A –2) was prepared. This witness further states that in his presence after the accused Chattar Pal was arrested his underwear (Ext. 3) was taken into possession by the police and recovery memo (Ext. A –3) was prepared. P.W. 3 Faqir Chand is also witness of the fact that the police took torch in their possession, in the light of which the witnesses alleged that they saw accused running. He proved that a recovery memo (Ext. A –4) was prepared.

12) P.W. 5 Sushila Devi is resident of Nala Pani Road, police station Dalanwala, who on the request of police came to the place of incident after the death of the deceased and saw that there was swelling in the vagina of the deceased.

13) P.W. 6 Sub Inspector Virendra Singh, who started the investigation, has corroborated the fact that after the dead body of the victim was taken into possession, inquest report (Ext. A –6) and other connected papers viz. sketch of the dead body, police form No. 13, police form No. 33 and letters to the Chief Medical Officer (Ext. A – 7 to Ext. A –12) were got prepared. This witness has also corroborated the fact that on 11.11.1995, after arresting the accused, his underwear was taken into possession and recovery memo (Ext. A –3) was got prepared. P.W. 7 Sub Inspector R.D. Tyagi, who concluded the investigation has stated that he interrogated the witnesses and prepared the site plan. This witness has also stated that the torch, in the light of which the witnesses stated that they saw accused running, was taken into possession on 17.12.1995 and report (Ext. A –4) was got prepared by him. P.W. 8 Sub Inspector Kripal Singh has stated on oath that on 11.11.1995 he was Head Moharrer in police station Dalanwala and on the basis of First Information Report, prepared the check report (Ext. A –15) and made necessary entry in the general diary, extract of which is Ext. A –16.

14) From the aforesaid evidence on record, it is proved beyond all reasonable doubt that accused / appellant Chhatar Pal committed rape on Ms. Manju, aged 14 years, who later died due to shock and haemorrhage as a result of ante mortem injuries received by her, we agree with the learned trial court that the charge of offences punishable under Section 376 and 304 Part I of I.P.C. are proved on the record as against the accused / appellant Chhatar Pal. The testimony of the witnesses is natural and reliable.

There are no material contradictions in their statements which create any reasonable doubt in the prosecution story.

15) Ms. Geeta Parihar, learned counsel for the appellant argued that the First Information Report is delayed by two days and appellant has been falsely implicated due to enmity. However, on going through the evidence on record, we found that there is sufficient explanation for delay in lodging the First Information Report as it has come in the statement of P.W. 9 Surendra Singh Chauhan, Circle Officer (City) that he found police personnel of the outpost Nala Pani Road, negligent in not lodging the First Information Report, on 09.11.1995.

16) Learned counsel for the appellant made a next submission that it has come in the evidence of P.W. 4 Dr. Alok Teotia that had the girl been taken to hospital immediately after the incident her life could have been saved. And on its basis it is argued that appellant cannot be said to be responsible for causing death of the deceased. True, we agree with this submission to the extent that accused had no intention to kill the girl, but the trial court has already taken this fact into consideration and found that the accused had no intention to commit murder of the girl, and accordingly, the accused was acquitted of the charge of offence punishable under Section 302 of I.P.C. and was convicted only under Section 304 Part II of I.P.C., as such, the above submission made on behalf of the accused / appellant is of no help to him. Where the act done with knowledge, without intention to cause death, such bodily

injury as is likely to cause death, the same is covered in part II of Section 304 of I.P.C.

17) In view of above discussion, and in the facts and circumstances proved on record, we are in agreement with the finding of the trial court that the charge against the accused / appellant Chhatar Pal relating to offences punishable under Section 376 of I.P.C. and that of one under Section 304 Part II of I.P.C. stand proved. We have also examined the record on the point of sentence, and we are in agreement that the sentence of imprisonment for life awarded by the trial court against the accused / appellant in respect of offence punishable under Section 376 of I.P.C. and that of rigorous imprisonment for a period of ten years under Section 304 Part II of I.P.C., is just and proper, in the present facts and circumstances of the case, which are proved beyond reasonable doubt as against the accused / appellant Chhatar Pal. Accordingly, the appeal is liable to be dismissed. The same is dismissed.

**(Prafulla C. Pant, J.)** **(J.C.S. Rawat, J.)**

Dt. April 13, 2007.
H. Negi